Exhibit "A"

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT OF OHIO
ROSS COUNTY

| | | |
|---|---|---|
| EDGAR F. BRADLEY, | : | CASE NO. 92-CA-1850 |
| PLAINTIFF-APPELLANT, | : | |
| -VS- | : | |
| SHERIFF THOMAS HAMMAN, | : | JUDGMENT ENTRY |
| DEFENDANT-APPELLEE | : | |

The assignments of error properly before this court having been ruled upon as heretofore set forth, it is the order of this court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Ross County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Exhibit "A"

Costs to be taxed in compliance with App.R. 24.

To all of which appellant, pro se, excepts.

Fred E. Jones, Presiding Judge

Richard N Koehler, Judge

James E. Walsh, Judge

Exhibit "A"

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT OF OHIO
ROSS COUNTY

| | | |
|---|---|---|
| EDGAR F. BRADLEY | : | CASE NO. 92-CA-1850 |
| PLAINTIFF-APPELLANT | : | |
| -VS- | : | |
| SHERIFF THOMAS HAMMAN | : | OPINION |
| DEFENDANT-APPELLEE | : | |

Edgar F. Bradley, 1695 Wapak Fisher Road, Wapakoneta, Ohio 45895, pro se

Richard G. Ward, Ross County Prosecuting Attorney, 20 S. Paint Street, Chillicothe, Ohio 45601, for Defendant-Appellee

JONES, P.J.

Appellant, Edgar F. Bradley, appeals a decision of the Ross County Court of Common Pleas dismissing appellant's replevin action in which he seeks the return of his fingerprints taken by appellee, Thomas Hamman, the Ross County Sheriff.

On May 28, 1991, appellee filed a

complaint charging appellant with obstructing official business under a Chillicothe city ordinance for refusing to be fingerprinted at the Ross County Jail on May 24, 1991. Appellant was at the jail as a result of having been arrested by the Ohio State Patrol in neighboring Jackson County on charges of speeding and resisting arrest for which he was subsequently convicted.[1]

After his initial refusal, appellant eventually yielded and provided his fingerprints.

---

1. The Jackson County charges have been the subject of a number of unsuccessful appellate actions by appellant. See State v. Bradley Nov. 18, 1991), Jackson App. No. CA 674, unreported; State ex rel. Bradley v. Esposito (Oct. 15, 1991), Jackson App. No. CA 678, unreported; and State ex rel. Bradley v. Esposito (Mar 5, 1992), Jackson App. No. CA 687, unreported.

Exhibit "A"

Appellant was acquitted of the obstructing official business charge in Chillicothe Municipal Court whereupon he commenced an action in common pleas court pursuant to R.C. Chapter 2737 to recover his fingerprints. The common pleas court sua sponte dismissed the complaint upon a determination that there was no wrongful detention of appellant's fingerprints since appellee had an administrative duty to maintain an identification record of every commitment to the county jail, which included identifying characteristics such as fingerprints.

On Appeal, appellant submits the following assignments of error for review:

Assignment of Error No. 1:

The Chillicothe Common Pleas Court, in Case nr. 91-CI-254 wrongfully applied an administrative ruling in equity in contradistinction to an action at law, thereby effectively ignoring the clear requirements of a statute. (Journal Entry,

Exhibit "A"
Jan. 15, 1992, Exhibit "A" of Appendix.)

Assignment of Error No. 2:

Factual evidence proving that fingerprints are property, that they are the property of the Appellant, and that he was found innocent of the misdemeanor of which hewas accused was presented to the lower court, but it nevertheless ignored the requirements of O.R.C. 109.60 in failing to grant the replevin.

Appellant's principal argument is that the trial court erred by failing to apply R.C. 109.60 and dismissing appellant's replevin action on the basis of Ohio Adm. Code 5120:1-8-01(D)(15), which requires each jail to maintain a booking and identification record of every commitment including other identifying characteristics It is generally recognized that peace officers have the power to fingerprint for identification purposes, and that the power to fingerprint for identification is reasonably incidental tothe sheriff's duty

to preserve the peace and prevent crime. United States v. Laub Baking Co., (N.D. Ohio 1968), 283 F.Supp. 217, 221.

R.C. 109.60 provides that upon the arrest of any person for any felony, on suspicion of any felony, or for a crime that is a misdemeanor on the first offense and a felony on subsequent offenses, the sheriff shall take that person's fingerprints.The statute further provides that:

"(s)hould any accused be found not guilty...the fingerprints...shall be given to the accused upon his request."

Appellant takes the position that his acquittal on the obstructing official business charge requires a return of his fingerprints under R.C. 109.60.

Appellant was charged with obstructing official business for refusing to be fingerprinted. The Chillicothe Municipal

Court correctly found appellant not guilty of this charge. See State v. Muldrow (1983), 10 Ohio Misc.2d 11. However, it was not the obstructing official business charges that originally prompted the sheriff to take appellant's fingerprints. It is readily apparent that the sheriff initially sought to fingerprint appellant because appellant had been arrested on charges of speeding and resisting arrest. It was appellant's refusal to be fingerprinted following his initial arrest that prompted the additional charge of obstructing official business.

Notwithstanding appellant's acquittal on the obstructing official business charge, he was found guilty in Jackson Municipal Court on the speeding and resisting arrest charges and those convictions have not been successfully challenged on appeal. The

fingerprints appellee obtained were the culmination of an arrest process initiated by the speeding and resisting arrest charges. We further find that although the aforementioned offenses are misdemeanors, appellee is nevertheless entitled to take appellant's fingerprints, not only under the provisions of R.C. 109.60, but also pursuant to the sheriff's inherent authority to preserve the peace and prevent crime. Laub, supra.

A replevin action is founded upon an unlawful detention of personal property, regardless of whether an unlawful taking has occurred. Jedlicka v. Good Mechanical Auto Co., (1984), 21 Ohio App.3d 19, 22; Black v. Cleveland, (1978), 58 Ohio App.2d 29, 32. We find that appellee was not only entitled to take appellant's fingerprints, but that

appellee's retention of the same does not violate R.C. 109.60 inasmuch as appellant was convicted of those misdemeanor offenses that initially prompted appellee to take appellant's fingerprints. Thus, there is no unlawful detention of personal property and the trial court correctly dismissed appellant's replevin action.

For the reasons set forth above, appellant's assignments of error are hereby overruled.

Judgment affirmed.

KOEHLER and WALSH, JJ., concur

# APPENDIX B

Exhibit "B"

Case No. 91-CRB-1247
Doc. 29 Page 511

MUNICIPAL COURT
OF
CHILLICOTHE, OHIO

---

CITY OF CHILLICOTHE
VS
EDGAR F. BRADLEY
6532 DAWSON RD.
CINCINNATI, OHIO

Charge Obstruction of Official Business

Violation: 525.07 A&B

---

ENTRY - MISDEMEANOR

Defendant having plead or changed plea to:

NOT GUILTY AND FOUND NOT GUILTY

The court hereby imposes the following order and sentence:

DEFENDANT IS DISCHARGED

Exhibit "B"

STATE OF OHIO

COUNTY OF ROSS, to wit:

I, Vivien P. Pfeifer, Court Reporter for the Municipal Court of Chillicothe, Ross County, Ohio do hereby certify that the foregoing is a true, accurate, and complete transcript of the Trial by Court, in the matter of the City of Chillicothe versus Edgar F. Bradley, Case Number 91-CRB 1247, held before the Honorable David A. Cutright, Judge for the Chillicothe Municipal Court on October 2nd, 1991.

Given under my hand this the 29th day of January, 1992.

Vivien P. Pfeifer

My commission expires Oct. 24, 1995

Now, we've got some substantial questions here. The first question and probably one of the more basic questions is, we've got a complaint here which is filed under City Ordinance by Sergeant Woods of the Ross County Sheriff's Department. Now, the Court would take notice of Section 737.11 of the Revised Code which says, the police force of the Municipal Corporation shall preserve the peace and enforce all ordinances and legislative authority of the Municipal Corporation. The Chillicothe Police Department is the enforcing authority of City Ordinances. We also have -- an Attorney General's opinion, OAG 90-091, which holds basically that a Ross County--that the--a Sheriff and his Deputies are authorized under 311.07 of the Revised Code and

22 737.041 of the Revised Code, to enforce
23 Municipal--or to enforce the law within
Municipal Corporations and provide
24 police protection of Municipal



---

1 Corporations if there is an appropriate
resolution of the Municipal Legislative
2 Authority. Normally, Municipal
3 Ordinances are not enforced by a
Sheriff. Now that is one of the first
4 basic questions in this case...
24 ...Problem number three is, that an



---

1 additional element of the offense is,
under the Ordinance, that the refusal
2 hampers or impedes a public official in
3 the performance of his lawful duties.

Now, hamper or impede is defined in Ohio Jury Instructions 521.31(5), hamper or impede, actually has the intended effect of preventing, obstructing, or delaying an official act. To keep from moving freely, to bar, or to hinder. Now in this case the law inforcement agency did have the authority to use what force may have been necessary to take the fingerprints and to take the photographs. And that is, I think, clearly set forth in Schmerber v. California, 384 U.S. 757, which involved a much more invasive procedure, of taking a blood sample. Now the Schmerber case is still the law and does hold that physical evidence can be taken even to the extent of a blood sample without the consent of the

Defendant. And again, the cite on Schmerber is 384 US 757 and 86 SCt. 1826, decided 1966. So, the Court notes that there was authority to go ahead and take the fingerprints and go ahead and take the photographs whether the Defendant would cooperate or not. So, his refuasal, really need not have hampered or impeded anything. They could have gone ahead and done it. In fact, they did go ahead apparently and take the photographs without his consent. Now I would note that we are not at all



---

concerned with the lawfulness of the original arrest in this case. The case of State v. Pembaur, which is 9 OS3rd

136, says absent bad faith on the part of a law enforcement officer and occupant of business premises cannot obstruct the officer in the discharge of his duty whether or not the Officer's actions are lawful under the circumstances. So, we don't have to be concerned about the original stop in Jackson County. We're not really concerned with anything that happenned in Jackson County, because even if the original arrest was not lawful, we're concerned only with the booking procedure in this case and the issues presented by that, we're not concerned at all with what happened in Jackson County by authority of State v. Pembaur case, which I have cited. But I very frankly, Mr. Hess have some serious

Exhibit "B"

15 problems with the three elements that I mentioned...

56

---

4 ...So, the Court in this case, Mr.
5 Hess, just simply feels that it is my
6 duty under Rule 29(A) to enter a judgment of acquittal. And I do enter
7 a judgment of acquittal and find the Defendant not guilty.

58

# APPENDIX C

Exhibit "C"

IN THE COURT OF COMMON PLEAS,

ROSS COUNTY, OHIO

| | | |
|---|---|---|
| EDGAR F. BRADLEY | ; | |
| PLAINTIFF | ; | CASE NO. 91-CI-254 |
| VS | ; | |
| SHERIFF TOM HAMMAN | ; | JOURNAL ENTRY |
| DEFENDANT | ; | |

This matter originates as a complaint for replevin filed by the Plaintiff, Edgar F. Bradley, on August 29, 1991. The complaint alleges that plaintiff was coerced into giving up his fingerprints to employees of the Ross County Jail. In that plaintiff claims his fingerprints are now being wrongfully detained, plaintiff prays that they be returned to him. On September 12, 1991, pursuant to Ohio Revised Code

Section 2737.03, plaintiff filed a motion for order of possession. On October 10, 1991, the defendant, Sheriff Tom Hamman, filed a request for hearing, claiming rightful possession of the fingerprints.

Plaintiff brings this action to recover personal property wrongfully detained as provided for in Ohio Revised Code Sections 2737.01 to 2737.20. In this regard, 19 Ohio Jurisprudence 3d (1980) 9-10, Conversion and Replevin, Section 78 states:

> "The fact that wrongful detention is essential to an action of replevin is clear, and it is frequently declared that unlawful or wrongful detention constitutes the gist of the action, or that it is the wrongful detention of the property, regardless of the lawfulness or unlawfulness of the taking of the property which gives the right of action."

In support of the above proposition of law, see also the case of Jedlicka v. Good Mechanical Auto Co., (1984), 21 Ohio App.

3d 19.

In that wrongful detention is the crux of a replevin action, it must now be examined whether defendant had a right to take and hold fingerprints of the defendant. Chapter 5120:1-8 of the Ohio Administrative Code, titled "Minimum Standards for Full Service Jails," provides at section 5120:1-8-01 (D) 15 that a booking and identification record shall be made of every commitment and that it shall include identifying characteristics. Based upon the authority of the Ohio Administrative Code, we find defendant had the duty to maintain an identification record of every commitment into the jail, including identifying characteristics, which reasonably encompass fingerprints. The fingerprints plaintiff seeks return of are not being wrongfully detained by the

defendant, and thus, cannot be the basis of a replevin action.

accordingly, we find that on the face of the plaintiff's complaint, it appears beyond doubt that the plaintiff can prove no set of facts entitling him to recovery in replevin. The Court, on its own motion sua sponte, hereby dismisses plaintiff's complaint.

Exceptions to plaintiff.

Costs to plaintiff.

Nicholas H. Holmes, Jr.
JUDGE, Common Pleas Court
Ross County, Ohio
Courtroom #2

# APPENDIX D

Exhibit "D"

# THE SUPREME COURT OF OHIO

1993 TERM

To wit: February 24, 1993

EDGAR F. BRADLEY ; CASE NO. 92-2361

APPELLANT ;

V. ;

SHERIFF TOM HAMMAN ; E N T R Y

APPELLEE :

upon consideration of the motion for an order directing the Court of Appeals for Ross County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $40.00, paid by Edgar F. Bradley.

(Court of Appeals No. 92CA1850)

THOMAS J. MOYER
CHIEF JUSTICE

# APPENDIX E

Exhibit "E"

OHIO REVISED CODE
§ 2921.31
OBSTRUCTING OFFICIAL BUSINESS

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

(B) Whoever violates this section is guilty of obstructing official business, a misdemeanor of the second degree.

HISTORY: 134 v H511. Eff. 1-1-74

# APPENDIX F

Exhibit "F"

OHIO REVISED CODE
§ 109.60

DUTY OF SHERIFFS AND CHIEFS OF POLICE TO TAKE FINGERPRINTS; REPORT.

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused by found not guilty of the offense charged, then said fingerprints and description shall

be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance or a person arrested for a misdemeanor, unless the officers have reason to believe that such person is a past offender, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age,

except as provided in section 2151.31 of the Revised Code.

HISTORY: 130 v 12, § 1, Eff. 9-24-63.